

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED
for Harrisonburg
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Civil Action No. 5:06-CV-00014

MEMORANDUM OPINION

By: Samuel G. Wilson
United States District Judge

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I.

The United States Magistrate Judge filed a thoughtful report pursuant to 28 U.S.C. §

636(b)(1)(B), supporting the Commissioner's decision and recommending that the court affirm. Moe appealed the magistrate judge's decision, and this court rejected the report. This court found that the Commissioner might conclude from new evidence that Moe's interferon treatment and its alleged side effects prevented Moe from working for one year and, on that basis, remanded the matter for further proceedings. Moe then filed a motion for attorney fees pursuant to the EAJA claiming that the position of the United States in the litigation was not "substantially justified".

II.

On this motion, the government bears the burden of proving that its position in this litigation was "substantially justified" or it must pay attorney's fees to Moe under the EAJA. 28 U.S.C. § 2312 (d)(1)(A). The Supreme Court has explained that "substantially justified" means "justified in substance or in the main" or "justified to a degree that could satisfy a reasonable person." Pierce v. Underwood, 487 U.S. 552, 564 (1998). According to the Court "a position can be justified even though it is not correct, and we believe it can be substantially (i.e., for the most part) justified if a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact." Pierce, 487 U.S. at 566 n.2. The Third Circuit has added that a court must not assume that the government's position was not substantially justified simply because the government lost on the merits. Kiarelddeen v. Ashcroft, 273 F.3d 542, 554 (3d Cir. 2001). With these precepts in mind, this court denies Moe's motion under the EAJA.

Although this court did not entirely agree with the conclusions in the magistrate judge's report, the court finds that the government's position in this matter to have been substantially justified. The report of the magistrate judge, which this court described as "thoughtful,"

recommending an affirmance of the ALJ decision evinces the reasonableness of the government's position. Pierce, 487 U.S. at 568-69 (stating that while not dispositive, litigation successes can be indicative of substantial justification). In fact, Moe's treatment note of August 31, 2005 stated that her interferon treatment would end a full month before the requisite twelve months which would have supported and adverse decision. However, it appeared from new evidence that the treatment's effects actually lasted longer. Consequently, new evidence caused this court not to adopt the magistrate judge's report. Under the circumstances, the court finds ample evidence supporting the government's position.

III.

The court finds that the government has met its burden of substantial justification and denies Moe's motion for award of attorney fees pursuant to the EAJA.

ENTER: This 9th day of October 2007.


UNITED STATES DISTRICT JUDGE